IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.402 OF 1997
IN
WRIT PETITION NO.2382 OF 1996

1. Hindustan Petroleum Corporation
Limited, having its office at
17, Jamshedji Tata Road,
Churchgate, Mumbai-400 020.

2. Chief Installation Manager, ..Appellants
Hindustan Petroleum Corporation (Orig.Respondent
Limited, Mazgaon Terminal, Nos.1 and 2)
Mumbai.

v/s.

1. Petroleum Employees Union,
registered Trade Union,
having its office at
Tel Rasayan Bhavan, Tilak Road,
Dadar (East), Mumbai- 400 014.

2. Union of India,
through the Secretary,
Government of India,
Ministry of Labour,
New Delhi.

3. The Secretary,
Central Advisory Contract
Labour Board, New Delhi,
through Central Government
Advocate, Ministry of Law
and Legal Affairs, Aaykar
Bhavan, Mumbai-400 020.

4. Regional Labour Commissioner (C)
Wakefield House, Ballard Estate,
Mumbai-400 038.

5. Messrs. Pravin & Co.
C/o.Mazgaon Terminal, HPCL,
Mazgaon, Mumbai. .. Respondents
(No.1-Orig.Petitioner
and Nos.2 to 5-orig.
respondent Nos.3 to 6)

Mr.M.D. Siodia i/by M/s.Rustomji & Ginwala for the appellants.

Ms.Ranjana Todankar i/by Mr.S.S.Pakale for the respondent No.1.

CORAM : R.M.LODHA AND
P.V.KAKADE, JJ.

DATED : 2nd December, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

Heard.

2. The impugned judgment is based on the judgment of the Supreme Court in the case of Air India Statutory Corporation v. United Labour Union and ors., AIR 1997 SC 645. The learned Single Judge relying upon the judgment of the Supreme Court in the case of Air India Statutory Corporation, directed the absorption of the workmen mentioned in Exhibit "A" to the petition in the regular service with effect from respective dates of their entering into service. The workmen concerned are the workmen working as sweepers in the canteen of the appellant Hindustan Petroleum Corporation at Mazgaon Terminal, Mumbai.

3. The Constitution Bench of the Supreme Court in the case of Steel Authority of India Ltd. and others v. National Union Water Front Workers and ors., AIR 2001 SC 3527 has overruled the judgment in the case of Air India Statutory Corporation (cited supra).

4. In paragraph 122 of the report, the Constitution Bench recorded its conclusions thus-

"122. The upshot of the above discussion is outlined thus:

(1)(a) Before January 28, 1986, the determination of the question whether Central Government or the State Government, is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry; or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government.

(b) After the said date in view of the new definition of that expression, the answer, to the question referred to above, has to be found in Cl.(a) of S.2 of the Industrial Disputes Act; if (i) the concerned Central Government company/undertaking or any undertaking is included therein eo nomin, or (ii) any industry is carried on (a) by or under the authority of the Central Government or, (b) by railway company; or (c) by specified controlled industry, then the Central Government will be the appropriate Government otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated; will be the appropriate Government.

2(a) A Notification under S.10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:

(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and

(2) having regard to

(i) conditions of work and benefits provided for the contract labour in the establishment in question; and

(ii) other relevant factors including those mentioned in sub-section (2) of S.10

(b) inasmuch as the impugned notification issued by the Central Government on December 9, 1976 does not satisfy the aforesaid requirements of S.10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passes or no action taken giving effect to the said Notification on or before the date of this judgment, shall be called in question in any Tribunal or Court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither S.10 of the CLRA Act nor any other provision n the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-section (1) of S.10 prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment.

(4) We overrule the judgment of this Court in Air India's case (supra) prospectively and declare that any direction issued by any industrial adjudicator/any Court including High Court, for absorption of contract labour following the judgment in Air India's case (supra), shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under S.10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the

industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaking to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment subject to conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under S.10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

5. Though the learned Single Judge based its decision on the judgment of the Supreme Court in the case of Air India Statutory Corporation but the legal position as it stands now is that the judgment in Air India Statutory Corporation has been specifically overruled and the notification under section 10(1) of the Contract Labour (Regulation and Abolition) Act, issued on 9th

December, 1976 quashed. In this backdrop, the judgment of the learned Single Judge cannot be sustained and it has to be set aside. As prayed by the learned counsel for the respondent No.1, we are satisfied that operation of the order may be stayed for some time to enable the petitioners to pursue appropriate legal remedy including the application to the appropriate Government for making reference of the industrial dispute said to have arisen between the parties for adjudication.

6. Resultantly, we allow the appeal and set aside the judgment dated 8th January, 1997 impugned in the present appeal. We direct that operation of the judgment shall remain stayed for a period of four months.

No costs.

(R.M.LODHA, J.)

(P.V.KAKADE, J.)